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July 28, 2015

Richard J. Muth
Orco Block & Hardscape
11100 Beach Blvd
Stanton, CA 90680

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter
Orco Block & Hardscape Violations of General Industrial Permit**

Dear Mr. Muth:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Orco Block & Hardscape's violations of the State Water Resources Control Board Water Quality Order Nos. 97-03-DWQ and 2014-0057-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit).¹ This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for Orco Block & Hardscape, located at 3501 Oceanside Blvd, CA 92056 ("Facility" or "Orco"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of Orco's Clean Water Act violations and CERF's intent to sue.

I. Coastal Environmental Rights Foundation (CERF)

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from Orco's ongoing illegal activities are discharged into the Loma Alta Creek, downstream to Loma Alta Slough, and eventually the Pacific Ocean. Loma Alta Creek supports approximately 100 species of wildlife, including threatened and endangered species.

¹ The Industrial Permit amendments, pursuant to Order No. 2014-0057-DWQ, become effective July 1, 2015. All references are to the General Industrial Permit prior to modification pursuant to Order No. 2014-0057-DWQ are to the "General Industrial Permit." All references to the Permit as modified by Order No. 2014-0057-DWQ are to the "New General Industrial Permit."

The public and members of CERF use Loma Alta Creek to fish, sail, boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the Orco Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by Orco Owners and/or Operators' failure to comply with the Clean Water Act and the General Industrial Permit.

II. Storm Water Pollution and the General Industrial Permit

A. Duty to Comply

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the General Industrial Permit in order to lawfully discharge. Orco enrolled as a discharger subject to the General Industrial Permit on April 8, 1992 for its facility at 3501 Oceanside Blvd, Oceanside California 92056. On June 10, 2015, Orco submitted a Notice of Intent for enrollment under the New General Industrial Permit.

Pursuant to the General Industrial Permit, a facility operator must comply with all conditions of the General Industrial Permit. Failure to comply with the General Industrial Permit is a Clean Water Act violation. (General Industrial Permit, § C.1; New General Industrial Permit §XXI.A. ["Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code..."]). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) General Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of a General Industrial Permit renewal application. (*Id.*). As an enrollee, Orco has a duty to comply with the General Industrial Permit and is subject to all of the provisions therein.

B. The Orco Facility Discharges Contaminated Storm Water in Violation of the General Industrial Permit

Discharge Prohibition A(2) of the General Industrial Permit and Section III.C. of the New General Industrial Permit prohibit storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. In addition, receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards, such as the CTR or applicable Basin Plan water quality standards. (See New Industrial General Permit, §III.D.; §VI.A.). "The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard." (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of such a standard, including the CTR.'" (*Id.* at 927).

If a discharger violates Water Quality Standards, the General Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to

meet such Water Quality Standards.(General Industrial Permit, Fact Sheet p. viii; 33 U.S.C. § 1311(b)(1)(C)). The Orco and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising the Orco SWPPP pursuant to section (C)(3).

The monitoring data for the Orco Facility indicates consistent, ongoing exceedances and violations of the General Industrial Permit. Orco Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of the above listed prohibitions and limitations during every significant rain event. Orco's sampling data reflects 54 discharge violations. Orco's own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

As reflected below, for every single rain event the Orco Owners and/or Operators have monitored, the Facility has exceeded the Iron benchmark. At times, the exceedances for Iron have been as high as **43 times** the benchmark.

No.	Date	Location	Parameter	Units	Result	Benchmark/ WQO
1	5/8/2015	Area 2	Iron	mg/L	17.6	1
2	5/8/2015	Area 2	pH	SU	9.15	6.0-9.0
3	5/8/2015	Area 2	TSS	mg/L	506	100
4	5/8/2015	Area 3	Iron	mg/L	26.5	1
5	5/8/2015	Area 3	Specific Conductance	umhos/cm	265	200
6	5/8/2015	Area 3	pH	SU	9.12	6.0-9.0
7	5/8/2015	Area 3	TSS	mg/L	704	100
8	12/2/2014	Area 2	Iron	mg/L	38.1	1
9	12/2/2014	Area 2	Specific Conductance	umhos/cm	260	200
10	12/2/2014	Area 2	Oil and Grease	mg/L	22	15
11	12/2/2014	Area 2	TSS	mg/L	1340	100
12	12/2/2014	Area 3	Iron	mg/L	43.8	1
13	12/2/2014	Area 3	Specific Conductance	umhos/cm	365	200
14	12/2/2014	Area 3	TSS	mg/L	1210	100
15	4/1/2014	Area 2	Iron	mg/L	13	1
16	4/1/2014	Area 2	Specific Conductance	umhos/cm	435	200
17	4/1/2014	Area 2	TSS	mg/L	1340	100
18	4/1/2014	Area 3	Iron	mg/L	11.9	1
19	4/1/2014	Area 3	Specific Conductance	umhos/cm	272	200
20	4/1/2014	Area 3	TSS	mg/L	210	100
21	11/21/2013	Area 2	Iron	mg/L	8.31	1
22	11/21/2013	Area 2	TSS	mg/L	178	100
23	11/21/2013	Area 3	Iron	mg/L	13.4	1
24	11/21/2013	Area 3	Specific Conductance	umhos/cm	389	200
25	11/21/2013	Area 3	pH	SU	9.42	6.0-9.0

26	11/21/2013	Area 3	TSS	mg/L	372	100
27	2/8/2013	Area 2	Iron	mg/L	31.9	1
28	2/8/2013	Area 2	Specific Conductance	umhos/cm	245	200
29	2/8/2013	Area 2	TSS	mg/L	940	100
30	2/8/2013	Area 3	Iron	mg/L	21	1
31	2/8/2013	Area 3	Specific Conductance	umhos/cm	238	200
32	2/8/2013	Area 3	TSS	mg/L	488	100
33	10/11/2012	Area 2	Iron	mg/L	8.94	1
34	10/11/2012	Area 2	pH	SU	9.58	6.0-9.0
35	10/11/2012	Area 3	Iron	mg/L	4.21	1
36	10/11/2012	Area 3	pH	SU	10.2	6.0-9.0
37	10/11/2012	Area 3	TSS	mg/L	213	100
38	11/4/2011	Area 2	Iron	mg/L	13.3	1
39	11/4/2011	Area 2	pH	SU	9.19	6.0-9.0
40	11/4/2011	Area 2	TSS	mg/L	324	100
41	11/4/2011	Area 3	Iron	mg/L	21.4	1
42	11/4/2011	Area 3	Specific Conductance	umhos/cm	201	200
43	11/4/2011	Area 3	pH	SU	10	6.0-9.0
44	11/4/2011	Area 3	TSS	mg/L	534	100
45	10/5/2011	Area 2	Iron	mg/L	5.04	1
46	10/5/2011	Area 2	Specific Conductance	umhos/cm	987	200
47	10/5/2011	Area 3	Iron	mg/L	23.5	1
48	10/5/2011	Area 3	Specific Conductance	umhos/cm	467	200
49	10/5/2011	Area 3	pH	SU	9.27	6.0-9.0
50	10/5/2011	Area 3	TSS	mg/L	450	100
51	10/6/2010	Area 2	Iron	mg/L	9.07	1
52	10/6/2010	Area 2	TSS	mg/L	278	100
53	10/6/2010	Area 3	Iron	mg/L	19.3	1
54	10/6/2010	Area 3	TSS	mg/L	859	100

Every day Orco Owners and/or Operators discharged or continue to discharge polluted storm water in violation of the Discharge Prohibitions and Receiving Water Limitations of the General Industrial Permit and New General Industrial Permit is a separate and distinct violation of the Permits and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Orco Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since July 28, 2010. These violations are ongoing and will continue each day contaminated storm water is discharged in violation of the requirements of the Permits.

C. Inadequate Storm Water Pollution Prevention Plan

One of the main requirements of the General Industrial Permit (and New General Industrial Permit) is the Storm Water Pollution Prevention Plan (SWPPP). (General Industrial Permit §A; New General Industrial Permit, Finding I.54, §X). Orco has not developed an adequate SWPPP as required by the Permits.

The Orco SWPPP dated July 2015 fails to note that Loma Alta Creek is impaired for Selenium, a pollutant that is likely to be associated with industrial storm water. Per section X.G.2.a.ix of the New General Industrial Permit the Orco Owners and/or Operators are required to assess the potential industrial pollutant sources to receiving waters with 303(d) listed impairments identified in Appendix 3. (New General Industrial Permit, §X.G.2.a.ix). Selenium is a component of cement and therefore may be a pollutant discharged into Loma Alta Creek.

Further, despite the consistent and continuous water quality violations established by Orco's monitoring data, the SWPPP BMPs have not been updated to address such exceedances.

Every day the Orco Owners and/or Operators operate the Facility without an adequate SWPPP constitutes a separate and distinct violation of the General Industrial Permit, the New General Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Orco Owners and/or Operators have been in daily and continuous violation of the General Industrial Permit since at least July 27, 2010. These violations are ongoing and the Orco Owners and/or Operators will continue to be in violation every day they fail to address the SWPPP inadequacies. Thus, the Orco Owners and/or Operators are liable for civil penalties of up to \$37,500 per day of violation for 1,830 violations of the General Industrial Permit and the Clean Water Act.

III. Remedies

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

Orco must develop and implement a SWPPP which complies with all elements required in the New General Industrial Permit, and address the consistent, numerous, and ongoing water quality violations at the Facility. Should the Orco Owners and/or Operators fail to do so, CERF will file an action against Orco for its prior, current, and anticipated violations of the Clean Water Act.

CERF's action will seek all remedies available under the Clean Water Act §1365(a)(d). CERF will seek the maximum penalty available under the law which is \$37,500 per day. CERF may further seek a court order to prevent Orco from discharging pollutants. Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

IV. Conclusion

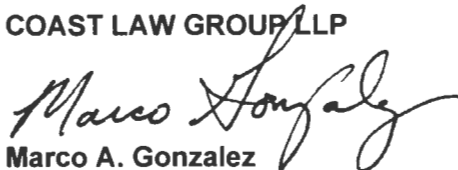
CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:


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CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

COAST LAW GROUP LLP


Marco A. Gonzalez


Livia Borak
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Coastal Environmental Rights Foundation

CC:

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